

Introduced by Senator Lieu

February 18, 2011

An act to amend Section 626.9 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, as introduced, Lieu. Firearms: gun-free school zones.

Existing law, subject to exceptions, provides that it is an offense for any person to possess a firearm in a place that the person knows, or reasonably should know, is a school zone, unless he or she has the written permission of the school district superintendent, his or her designee, or equivalent school authority. Existing law defines "school zone" for these purposes as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school. Existing law provides an exception to the prohibition for handguns that are unloaded and either in a locked container or within the locked trunk of a motor vehicle.

This bill would revise this exception to instead except from the above prohibition a handgun that is lawfully possessed, and either unloaded and in a locked container inside a motor vehicle or unloaded and inside a locked trunk of a motor vehicle. The bill would increase the size of the zone to include the area up to 1,500 feet from the grounds of the public or private school. By expanding the scope of an existing offense, this bill would impose a state-mandated local program. The bill would create an exception to the school zone firearms possession prohibition for firearms that are otherwise lawfully possessed or transported in a vehicle on a driveway or parking lot of a school, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 626.9 of the Penal Code, as amended by
2 Section 59 of Chapter 178 of the Statutes of 2010, is amended to
3 read:

4 626.9. (a) This section shall be known, and may be cited, as
5 the Gun-Free School Zone Act of 1995.

6 (b) Any person who possesses a firearm in a place that the
7 person knows, or reasonably should know, is a school zone, as
8 defined in paragraph (1) of subdivision (e), unless it is with the
9 written permission of the school district superintendent, his or her
10 designee, or equivalent school authority, shall be punished as
11 specified in subdivision (f).

12 (c) Subdivision (b) does not apply to the possession of a firearm
13 under any of the following circumstances:

14 (1) Within a place of residence or place of business or on private
15 property, if the place of residence, place of business, or private
16 property is not part of the school grounds and the possession of
17 the firearm is otherwise lawful.

18 (2) (A) ~~When the firearm is an unloaded~~ *a lawfully possessed*
19 *pistol, revolver, or other firearm capable of being concealed on*
20 *the person is unloaded* and is in a locked container *inside a motor*
21 *vehicle or within the unloaded and inside a locked trunk of a motor*
22 *vehicle.*

23 ~~This~~

24 (B) *This section does not prohibit or limit the otherwise lawful*
25 *transportation of any other firearm, other than a pistol, revolver,*
26 *or other firearm capable of being concealed on the person, in*
27 *accordance with state law, including the otherwise lawful*
28 *possession or lawful transportation of a firearm, other than a*
29 *pistol, revolver, or other firearm capable of being concealed upon*

1 *the person, located within a vehicle while the vehicle is on the*
2 *driveway or the parking lot of a school.*

3 (3) When the person *lawfully* possessing the firearm reasonably
4 believes that he or she is in grave danger because of circumstances
5 forming the basis of a current restraining order issued by a court
6 against another person or persons who has or have been found to
7 pose a threat to his or her life or safety. This subdivision may not
8 apply when the circumstances involve a mutual restraining order
9 issued pursuant to Division 10 (commencing with Section 6200)
10 of the Family Code absent a factual finding of a specific threat to
11 the person's life or safety. Upon a trial for violating subdivision
12 (b), the trier of a fact shall determine whether the defendant was
13 acting out of a reasonable belief that he or she was in grave danger.

14 (4) (A) When the person is exempt from the prohibition against
15 carrying a concealed firearm pursuant to Section 25615, 25625,
16 25630, or 25645.

17 (B) *Nothing in this subdivision is meant to allow an individual*
18 *to possess a firearm on any school facility without the written*
19 *permission of the school district superintendent, his or her*
20 *designee, or equivalent school authority, except as provided in*
21 *subparagraph (A).*

22 (d) (1) Except as provided in subdivision (b), it shall be
23 unlawful for any person, with reckless disregard for the safety of
24 another, to discharge, or attempt to discharge, a firearm in a school
25 zone, as defined in paragraph (1) of subdivision (e).

26 ~~The~~

27 (2) *The* prohibition contained in this subdivision does not apply
28 to the discharge of a firearm to the extent that the conditions of
29 paragraph (1) of subdivision (c) are satisfied.

30 (e) As used in this section, the following definitions shall apply:

31 (1) "School zone" means an area in, or on the grounds of, a
32 public or private school providing instruction in kindergarten or
33 grades 1 to 12, inclusive, or within a distance of ~~1,000~~ 1,500 feet
34 from the grounds of the public or private school.

35 (2) "Firearm" has the same meaning as that term is given in
36 subdivisions (a) to (d), inclusive, of Section 16520.

37 (3) "Locked container" has the same meaning as that term is
38 given in Section 16850.

39 (4) "Concealed firearm" has the same meaning as that term is
40 given in Sections 25400 and 25610.

1 (5) “School facility” means any building or property, excluding
2 driveways and parking lots, located on the grounds of a public or
3 private school providing instruction in kindergarten or grades 1
4 to 12, inclusive.

5 (f) (1) Any person who violates subdivision (b) by possessing
6 a firearm in, or on the grounds of, a public or private school
7 providing instruction in kindergarten or grades 1 to 12, inclusive,
8 shall be punished by imprisonment in the state prison for two,
9 three, or five years.

10 (2) Any person who violates subdivision (b) by possessing a
11 firearm within a distance of ~~1,000~~ 1,500 feet from the grounds of
12 a public or private school providing instruction in kindergarten or
13 grades 1 to 12, inclusive, shall be punished as follows:

14 (A) By imprisonment in the state prison for two, three, or five
15 years, if any of the following circumstances apply:

16 (i) If the person previously has been convicted of any felony,
17 or of any crime made punishable by any provision listed in Section
18 16580.

19 (ii) If the person is within a class of persons prohibited from
20 possessing or acquiring a firearm pursuant to Chapter 2
21 (commencing with Section 29800) or Chapter 3 (commencing with
22 Section 29900) of Division 9 of Title 4 of Part 6 of this code or
23 Section 8100 or 8103 of the Welfare and Institutions Code.

24 (iii) If the firearm is any pistol, revolver, or other firearm capable
25 of being concealed upon the person and the offense is punished as
26 a felony pursuant to Section 25400.

27 (B) By imprisonment in a county jail for not more than one year
28 or by imprisonment in the state prison for two, three, or five years,
29 in all cases other than those specified in subparagraph (A).

30 (3) Any person who violates subdivision (d) shall be punished
31 by imprisonment in the state prison for three, five, or seven years.

32 (g) (1) Every person convicted under this section for a
33 misdemeanor violation of subdivision (b) who has been convicted
34 previously of a misdemeanor offense enumerated in Section 23515
35 shall be punished by imprisonment in a county jail for not less
36 than three months, or if probation is granted or if the execution or
37 imposition of sentence is suspended, it shall be a condition thereof
38 that he or she be imprisoned in a county jail for not less than three
39 months.

1 (2) Every person convicted under this section of a felony
2 violation of subdivision (b) or (d) who has been convicted
3 previously of a misdemeanor offense enumerated in Section 23515,
4 if probation is granted or if the execution of sentence is suspended,
5 it shall be a condition thereof that he or she be imprisoned in a
6 county jail for not less than three months.

7 (3) Every person convicted under this section for a felony
8 violation of subdivision (b) or (d) who has been convicted
9 previously of any felony, or of any crime made punishable by any
10 provision listed in Section 16580, if probation is granted or if the
11 execution or imposition of sentence is suspended, it shall be a
12 condition thereof that he or she be imprisoned in a county jail for
13 not less than three months.

14 (4) The court shall apply the three-month minimum sentence
15 specified in this subdivision, except in unusual cases where the
16 interests of justice would best be served by granting probation or
17 suspending the execution or imposition of sentence without the
18 minimum imprisonment required in this subdivision or by granting
19 probation or suspending the execution or imposition of sentence
20 with conditions other than those set forth in this subdivision, in
21 which case the court shall specify on the record and shall enter on
22 the minutes the circumstances indicating that the interests of justice
23 would best be served by this disposition.

24 (h) Notwithstanding Section 25605, any person who brings or
25 possesses a loaded firearm upon the grounds of a campus of, or
26 buildings owned or operated for student housing, teaching,
27 research, or administration by, a public or private university or
28 college, that are contiguous or are clearly marked university
29 property, unless it is with the written permission of the university
30 or college president, his or her designee, or equivalent university
31 or college authority, shall be punished by imprisonment in the state
32 prison for two, three, or four years. Notwithstanding subdivision
33 (k), a university or college shall post a prominent notice at primary
34 entrances on noncontiguous property stating that firearms are
35 prohibited on that property pursuant to this subdivision.

36 (i) Notwithstanding Section 25605, any person who brings or
37 possesses a firearm upon the grounds of a campus of, or buildings
38 owned or operated for student housing, teaching, research, or
39 administration by, a public or private university or college, that
40 are contiguous or are clearly marked university property, unless

1 it is with the written permission of the university or college
2 president, his or her designee, or equivalent university or college
3 authority, shall be punished by imprisonment in the state prison
4 for one, two, or three years. Notwithstanding subdivision (k), a
5 university or college shall post a prominent notice at primary
6 entrances on noncontiguous property stating that firearms are
7 prohibited on that property pursuant to this subdivision.

8 (j) For purposes of this section, a firearm shall be deemed to be
9 loaded when there is an unexpended cartridge or shell, consisting
10 of a case that holds a charge of powder and a bullet or shot, in, or
11 attached in any manner to, the firearm, including, but not limited
12 to, in the firing chamber, magazine, or clip thereof attached to the
13 firearm. A muzzle-loader firearm shall be deemed to be loaded
14 when it is capped or primed and has a powder charge and ball or
15 shot in the barrel or cylinder.

16 (k) This section does not require that notice be posted regarding
17 the proscribed conduct.

18 (l) This section does not apply to a duly appointed peace officer
19 as defined in Chapter 4.5 (commencing with Section 830) of Title
20 3 of Part 2, a full-time paid peace officer of another state or the
21 federal government who is carrying out official duties while in
22 California, any person summoned by any of these officers to assist
23 in making arrests or preserving the peace while he or she is actually
24 engaged in assisting the officer, a member of the military forces
25 of this state or of the United States who is engaged in the
26 performance of his or her duties, a person holding a valid license
27 to carry the firearm pursuant to Chapter 4 (commencing with
28 Section 26150) of Division 5 of Title 4 of Part 6, or an armored
29 vehicle guard, engaged in the performance of his or her duties, as
30 defined in subdivision (e) of Section 7521 of the Business and
31 Professions Code.

32 (m) This section does not apply to a security guard authorized
33 to carry a loaded firearm pursuant to Article 4 (commencing with
34 Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

35 (n) This section does not apply to an existing shooting range at
36 a public or private school or university or college campus.

37 (o) This section does not apply to an honorably retired peace
38 officer authorized to carry a concealed or loaded firearm pursuant
39 to any of the following:

- 1 (1) Article 2 (commencing with Section 25450) of Chapter 2
- 2 of Division 5 of Title 4 of Part 6.
- 3 (2) Section 25650.
- 4 (3) Sections 25900 to 25910, inclusive.
- 5 (4) Section 26020.

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